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U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

THE SOCIETY OF LLOYD'S

CIVIL ACTION

VERSUS

NO. 03-2316

JAMES DAVID TUFES, III, and
THOMAS OTTO LIND

SECTION "F"

ORDER AND REASONS

Before the Court is a motion for summary judgment by
Lloyd's. For the reasons that follow, the motion is GRANTED.¹

I. Background

The Society of Lloyd's filed this lawsuit against the
defendants under the Louisiana Enforcement of Foreign Judgments

¹ Lloyd's also filed a motion for summary judgment against
defendant Thomas Otto Lind. Lind, who is represented by the
same counsel as James David Tufts, III, did not file an
opposition to this motion. Thus, the motion is GRANTED as
unopposed.

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Act, La.Rev. Stat. § 13:4341, et seq., to enforce a judgement that it obtained against the defendants in the English High Court of Justice, Queens Bench Division, in March 1998. The defendants were members of Lloyd's who underwrote insurance policies for Lloyds. Lloyd's now moves for summary judgment against both defendants.

II. Summary Judgment

Federal Rule of Civil Procedure 56 instructs that summary judgment is proper if the record discloses no genuine issue as to any material fact such that the moving party is entitled to judgment as a matter of law. No genuine issue of fact exists if the record taken as a whole could not lead a rational trier of fact to find for the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586 (1986). A genuine issue of fact exists only "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The Court emphasizes that the mere argued existence of a factual dispute does not defeat an otherwise properly supported motion. See id. Therefore, "[i]f the evidence is merely

insufficient, or is not significantly probative," summary judgment is inappropriate. Id. at 249-50. Summary judgment is also proper if the party opposing the motion fails to establish an essential element of his case. Celotex Corp. v. Catrett, 477 U.S. 317, 328 (1986). In this regard, the non-moving party must do more than simply deny the allegations raised by the moving party. Donachey v. Ocean Drilling & Exploration Co., 974 F.2d 1028, 1035 (5th Cir. 1992). Rather, he must come forward with competent evidence, such as affidavits or depositions, to rebut his claims. Id. Hearsay evidence and unsworn affidavits do not qualify as competent opposing evidence. Martin v. Stone Oil Distrib., Inc., 819 F.2d 547, 549 (5th Cir. 1987). Finally, in evaluating the summary judgment motion, the court must read the facts in the light most favorable to the non-moving party. Anderson, 477 U.S. at 255.

Under the Louisiana Enforcement of Foreign Judgments Act, La. Stat. Tit. 13:4241, et seq., there are limited defenses available in a lawsuit to enforce a foreign judgment:

The substantive defenses available in an action to enforce a foreign judgment include a lack of personal or subject matter

jurisdiction of the rendering court, extrinsic fraud in the procurement of the judgment, satisfaction, lack of due process, or other grounds that make a judgment invalid or unenforceable. However, the nature, amount, or other merits of the judgment may not be relitigated in the state which enforcement is sought.

WellTech, Inc. V. Abadie, 666 So. 2d 1234, 1236 (La. App. 5th Cir. 1996) (citing Ohio v. Kline, 587 So. 2d 766 (La. App. 2d Cir. 1991)). The Court finds that the defenses asserted by James David Tufts, III are not available to attack the validity of the plaintiff's judgment in this case. Tufts, III asserts that he is not the same James David Tufts against whom Lloyd's obtained a judgment. He argues that the Lloyd's judgment might be against his father, James David Tufts, II, who was also a member of Lloyd's and who was involved in the litigation with Lloyd's. The Court is not convinced. The attachment to the May 13, 1998 Order from the English High Court of Justice, Queen's Bench Division, shows that the claims by Lloyd's were against "Mr J D Tufts III." Furthermore, James David Tufts, III was represented by counsel in the English litigation and should have raised the argument that he was not the proper party to the litigation at that time. WellTech, Inc., 666 So.2d at 1236.

Accordingly, the motion for summary judgment by Lloyd's against James David Tufts, III is GRANTED. The motion for summary judgment against Thomas Otto Lind is GRANTED as unopposed.

New Orleans, Louisiana, May 17, 2004.


MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE